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10 and DISABILITY RIGHTS

11 ENFORCEMENT, EDUCATION,

12 SERVICES: HELPING YOU

13 HELP OTHERS

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EMC

11 CRAIG YATES, an individual; and)
12 DISABILITY RIGHTS, ENFORCEMENT,)
13 EDUCATION, SERVICES:HELPING YOU)
14 HELP OTHERS, a California public benefit)
15 corporation,)

16 Plaintiffs,)

17 v.)

18 SUSHI BISTRO, INC., a California)
19 corporation; JEFFERY LAU; and SOPHIA)
20 LAU,)

21 Defendants.)

CV 08 2545

Civil Rights**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:****1st CAUSE OF ACTION:** For Denial of Access
by a Public Accommodation in Violation of the
Americans with Disabilities Act of 1990 (42
U.S.C. §12101, *et seq.*)**2nd CAUSE OF ACTION:** For Denial of Full
and Equal Access in Violation of California
Civil Code §§54, 54.1 and 54.3**3rd CAUSE OF ACTION:** For Denial of
Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et seq.***4th CAUSE OF ACTION:** For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)**DEMAND FOR JURY**

1 Plaintiffs CRAIG YATES, an individual; and DISABILITY RIGHTS, ENFORCEMENT,
2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants SUSHI
4 BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU and allege as
5 follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
8 disabilities, of which class plaintiff CRAIG YATES and the membership of DREES are
9 members, for failure to remove architectural barriers structural in nature at defendants' SUSHI
10 BISTRO, a place of public accommodation, thereby discriminatorily denying plaintiffs and the
11 class of other similarly situated persons with physical disabilities access to, the full and equal
12 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
13 accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to the
14 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
15 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
17 November 29, 2007, March 5, 2008, April 3, 2008 and May 4, 2008, was an invitee, guest,
18 patron, customer at defendants' SUSHI BISTRO, in the City of San Francisco, California. At
19 said time and place, defendants failed to provide proper legal access to the bistro, which is a
20 "public accommodation" and/or a "public facility" including, but not limited to the entrance, path
21 of travel and unisex restroom. The denial of access was in violation of both federal and
22 California legal requirements, and plaintiff CRAIG YATES suffered violation of his civil rights
23 to full and equal access, and was embarrassed and humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
 8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
 10 founded on the facts that the real property which is the subject of this action is located at/near
 11 445 Balboa Street, San Francisco, in the City and County of San Francisco, State of California,
 12 and that plaintiffs' causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically
 15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
 16 disabled", "physically handicapped" and "person with physical disabilities" are used
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
 20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
 21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California
 22 and United States laws. Plaintiff is triplegic. Plaintiff CRAIG YATES requires the use of a
 23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that
 24 portion of the public whose rights are protected by the provisions of Health & Safety Code
 25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
 26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
 27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
 28 §12101, *et seq.*

1 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
2 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
3 with persons with disabilities to empower them to be independent in American society. DREES
4 accomplishes its goals and purposes through education on disability issues, enforcement of the
5 rights of persons with disabilities, and the provision of services to persons with disabilities, the
6 general public, public agencies and the private business sector. DREES brings this action on
7 behalf of its members, many of whom are persons with physical disabilities and whom have
8 standing in their right to bring this action.

9 7. That members of DREES, like plaintiff CRAIG YATES, will or have been guests
10 and invitees at the subject SUSHI BISTRO, and that the interests of plaintiff DREES in
11 removing architectural barriers at the subject bistro advance the purposes of DREES to assure
12 that all public accommodations, including the subject bistro, are accessible to independent use by
13 mobility-impaired persons. The relief sought by plaintiff DREES as alleged herein is purely
14 statutory in nature.

15 8. Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and
16 SOPHIA LAU (hereinafter alternatively collectively referred to as "defendants") are the owners
17 and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public
18 accommodation known as the SUSHI BISTRO, located at/near 445 Balboa Street, San Francisco,
19 California, or of the building and/or buildings which constitute said public accommodation.

20 9. At all times relevant to this complaint, defendants SUSHI BISTRO, INC., a
21 California corporation; JEFFERY LAU; and SOPHIA LAU, own and operate in joint venture the
22 subject SUSHI BISTRO as a public accommodation. This business is open to the general public
23 and conducts business therein. The business is a "public accommodation" or "public facility"
24 subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety
25 code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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10. At all times relevant to this complaint, defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU are jointly and severally responsible to identify and remove architectural barriers at the subject SUSHI BISTRO pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

PRELIMINARY FACTUAL ALLEGATIONS:

11. The SUSHI BISTRO, is a bistro, located at/near 445 Balboa Street, San Francisco, California. The SUSHI BISTRO, its entrance, path of travel, unisex restroom, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions", each of which has subjected the SUSHI BISTRO and each of its facilities, its entrance, path of travel and unisex restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

12. At all times stated herein, plaintiff CRAIG YATES was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendants, and each of them, advertised, publicized and held out the SUSHI BISTRO as being handicapped accessible and handicapped usable.

14. On or about November 29, 2007, March 5, 2008, April 3, 2008 and May 4, 2008, plaintiff CRAIG YATES was an invitee and guest at the subject SUSHI BISTRO, sometimes alone and sometimes with a guest for purposes of sushi and beverage.

15. On or about November 29, 2007, plaintiff CRAIG YATES and his son Nicholas Yates, dined at SUSHI BISTRO. Plaintiff CRAIG YATES approached the entry door and

1 pushed the ISA button for access. The power door did not work. As a result, the pressure was
2 estimated to be in excess of twenty-five (25) lbs.

3 16. At said time and place, plaintiff CRAIG YATES son Nicholas opened the door
4 and the two entered the restaurant.

5 17. At said time and place, it was quite crowded. Plaintiff CRAIG YATES and his
6 son were seated next to the door. They had a meal. Plaintiff CRAIG YATES needed to use the
7 unisex restroom, but the path of travel between the sushi bar and tables required approximately
8 four (4) customers at the tables to stand up and move, and approximately three (3) customers
9 sitting at the bar to do the same. The restroom, which appeared once to be a full and compliant
10 restroom, was not useable by the disabled: tables and chairs were stacked inside the restroom and
11 the lavatory was in a cabinet. Plaintiff CRAIG YATES encountered these barriers.

12 18. At said time and place, plaintiff CRAIG YATES formed the opinion that this
13 bistro had been formerly "ADAAG" compliant, and that the landlord and the tenant allowed it to
14 fall out of compliance. The failure to maintain the formerly accessible bistro as "accessible" was
15 "intentional."

16 19. On or about March 5, 2008, plaintiff CRAIG YATES returned alone to SUSHI
17 BISTRO. As plaintiff approached the door to SUSHI BISTRO, a customer opened the door for
18 plaintiff CRAIG YATES. Plaintiff CRAIG YATES had a meal and used the unisex restroom
19 encountering the same barriers.

20 20. On or about March 11, 2008, plaintiff CRAIG YATES wrote both the landlord
21 and the tenant about the access problems at SUSHI BISTRO. Plaintiff CRAIG YATES never
22 received a response.

23 21. On or about April 3, 2008, plaintiff CRAIG YATES returned to SUSHI BISTRO.
24 No remedial measures had been undertaken. On this occasion, the door was propped open.

25 22. At said time and place, plaintiff CRAIG YATES was seated. Plaintiff CRAIG
26 YATES was approached by an Asian woman, who appeared to be in a managerial position.
27 Plaintiff CRAIG YATES began to explain the access problems. It did not appear she had a firm
28 understanding of English. She summoned the sushi chef. The sushi chef was a very polite

1 Japanese man. Plaintiff CRAIG YATES and this fellow discussed the access problems. The
2 sushi chef stated in substance, that the power door was unplugged, because the school kids would
3 press the button while the restaurant was closed and the door locked. This would damage the
4 opening mechanism. Therefore, the power door is left unplugged or inoperable.

5 23. At said time and place, the sushi chef plugged in the power door, and the door was
6 operable if you slightly applied pressure to the door pushing or pulling it. However, the door
7 entrance button did not activate the door.

8 24. At said time and place, plaintiff CRAIG YATES formed the opinion that the door
9 button probably didn't work, because the button needed a battery. The Japanese gentleman said
10 he would have someone look into the problem.

11 25. At said time and place, plaintiff CRAIG YATES went on to explain the problem
12 in the restroom: tables, chairs and other supplies stacked in the restroom, and that the lavatory is
13 in a cabinet. The chef was extremely polite and apologized. The chef indicated that they would
14 take care of the problems. Plaintiff CRAIG YATES suggested that the lavatory be taken out of
15 the cabinet and replaced with a wall hung sink. Thereafter, plaintiff CRAIG YATES left.

16 26. On or about May 4, 2008, plaintiff CRAIG YATES returned to SUSHI BISTRO.
17 The power door was still inoperable. When plaintiff CRAIG YATES attempted to use the
18 restroom, he discovered that the restroom was still cluttered with tables and chairs. All other
19 barriers were still in place. Plaintiff CRAIG YATES was surprised that the removal of the
20 simplest barriers had not been removed to wit:

- 21 • the tables and the chairs from the restroom.

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1 27. Therefore, at said time(s) and place, plaintiff CRAIG YATES, a person with a
 2 disability, encountered the following inaccessible elements of the subject SUSHI BISTRO which
 3 constituted architectural barriers and a denial of the proper and legally-required access to a public
 4 accommodation to persons with physical disabilities including, but not limited to:

- 5 a. lack of directional signage to show accessible routes of travel, i.e.
 entrances: power door button inoperable;
- 6 b. lack of an accessible entrance;
- 7 c. lack of a handicapped-accessible unisex public restroom;
- 8 d. lack of a clear path of travel between tables; and
- 9 e. On personal knowledge, information and belief, other public facilities and
 10 elements too numerous to list were improperly inaccessible for use by
 11 persons with physical disabilities.

12 28. At all times stated herein, the existence of architectural barriers at defendants'
 13 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
 14 with the Americans with Disabilities Act of 1990 either then, now or in the future.

15 29. On or about March 11, 2008, defendant(s) were sent two (2) letters by or on behalf
 16 of plaintiff CRAIG YATES advising of the existence of architectural barriers, requesting a
 17 response within 14 days and requesting remedial measures be undertaken within 90 days or an
 18 explanation of why the time limit set could not be met and/or extenuating circumstances. Said
 19 letters are attached hereto collectively as exhibit "A" and incorporated by reference as though
 20 fully set forth herein. Defendants' failure to respond evidenced an intent not to seek or engage in
 21 an early and reasonable resolution of the matter.

22 30. At all times stated herein, defendants, and each of them, did not act as reasonable
 23 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
 24 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from
 25 receiving the same goods and services as able bodied people and some of which may and did pose
 26 a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result of
 27 defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered
 28 bodily injury.

1 31. As a legal result of defendants SUSHI BISTRO, INC., a California corporation;
2 JEFFERY LAU; and SOPHIA LAU's failure to act as a reasonable and prudent public
3 accommodation in identifying, removing or creating architectural barriers, policies, practices and
4 procedures that denied access to plaintiffs and other persons with disabilities, plaintiffs suffered
5 the damages as alleged herein.

6 32. As a further legal result of the actions and failure to act of defendants, and as a
7 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
8 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff
9 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical
10 disabilities to full and equal access to public facilities.

11 33. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,
12 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
13 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
14 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
15 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
16 distress over and above that usually associated with the discrimination and physical injuries
17 claimed, and no expert testimony regarding this usual mental and emotional distress will be
18 presented at trial in support of the claim for damages.

19 34. Defendants', and each of their, failure to remove the architectural barriers
20 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public
21 accommodation, and continues to create continuous and repeated exposure to substantially the
22 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

23 35. Plaintiff CRAIG YATES and the membership of DREES were denied their rights
24 to equal access to a public facility by defendants SUSHI BISTRO, INC., a California corporation;
25 JEFFERY LAU; and SOPHIA LAU, because defendants SUSHI BISTRO, INC., a California
26 corporation; JEFFERY LAU; and SOPHIA LAU maintained a bistro without access for persons
27 with physical disabilities to its facilities, including but not limited to the entrance, path of travel,
28 unisex restroom, and other public areas as stated herein, and continue to the date of filing this

1 complaint to deny equal access to plaintiffs and other persons with physical disabilities in these
2 and other ways.

3 36. On information and belief, construction alterations carried out by defendants have
4 also triggered access requirements under both California law and the Americans with Disabilities
5 Act of 1990.

6 37. Plaintiffs, as described hereinbelow, seek injunctive relief to require the SUSHI
7 BISTRO to be made accessible to meet the requirements of both California law and the
8 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
9 operate the bistro as a public facility.

10 38. Plaintiffs seek damages for violation of their civil rights on November 29, 2007,
11 March 5, 2008, April 3, 2008 and May 4, 2008, and they seek statutory damages of not less than
12 \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for
13 each day after his/her visit that the trier of fact (court/jury) determines was the date that some or
14 all remedial work should have been completed under the standard that the landlord and tenant had
15 an ongoing duty to identify and remove architectural barriers where it was readily achievable to do
16 so, which deterred plaintiff CRAIG YATES from returning to the subject public accommodation
17 because of his knowledge and/or belief that neither some or all architectural barriers had been
18 removed and that said premises remains inaccessible to persons with disabilities whether a
19 wheelchair user or otherwise.

20 39. On information and belief, defendants have been negligent in their affirmative duty
21 to identify the architectural barriers complained of herein and negligent in the removal of some or
22 all of said barriers.

23 40. Because of defendants' violations, plaintiffs and other persons with physical
24 disabilities are unable to use public facilities such as those owned and operated by defendants on a
25 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
26 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
27 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling
28 defendants to make the SUSHI BISTRO accessible to persons with disabilities.

1 41. On information and belief, defendants have intentionally undertaken to modify and
2 alter existing building(s), and have failed to make them comply with accessibility requirements
3 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
4 of them, in failing to provide the required accessible public facilities at
5 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
6 despicable conduct carried out by defendants, and each of them, with a willful and conscious
7 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
8 trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more
9 profound example of defendants, and each of them, to other operators of other bistro and other
10 public facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51,
11 51.5 and 54.

12 42. Plaintiffs are informed and believe and therefore allege that defendants
13 SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, and each of
14 them, caused the subject building(s) which constitute the SUSHI BISTRO to be constructed,
15 altered and maintained in such a manner that persons with physical disabilities were denied full
16 and equal access to, within and throughout said building(s) of the SUSHI BISTRO and were
17 denied full and equal use of said public facilities. Furthermore, on information and belief,
18 defendants have continued to maintain and operate said bistro and/or its building(s) in such
19 conditions up to the present time, despite actual and constructive notice to such defendants that
20 the configuration of the bistro and/or its building(s) is in violation of the civil rights of persons
21 with physical disabilities, such as plaintiff CRAIG YATES, the membership of plaintiff DREES
22 and the disability community which DREES serves. Such construction, modification, ownership,
23 operation, maintenance and practices of such public facilities are in violation of Civil Code §§51,
24 51.5 and 54, Health and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

25 43. On personal knowledge, information and belief, the basis of defendants' actual and
26 constructive notice that the physical configuration of the facilities including, but not limited to,
27 architectural barriers constituting the SUSHI BISTRO and/or building(s) was in violation of the
28 civil rights of persons with physical disabilities, such as plaintiffs, includes, but is not limited to,

1 communications with invitees and guests, plaintiff CRAIG YATES himself, sponsors of
2 conferences, owners of other restaurants, hotels, motels and businesses, notices they obtained
3 from governmental agencies upon modification, improvement, or substantial repair of the subject
4 premises and other properties owned by these defendants, newspaper articles and trade
5 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public
6 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and
7 other similar information. Defendants' failure, under state and federal law, to make the SUSHI
8 BISTRO accessible is further evidence of defendants' conscious disregard for the rights of
9 plaintiff and other similarly situated persons with disabilities. Despite being informed of such
10 effect on plaintiff and other persons with physical disabilities due to the lack of accessible
11 facilities, defendants, and each of them, knowingly and willfully refused to take any steps to
12 rectify the situation and to provide full and equal access for plaintiffs and other persons with
13 physical disabilities to the bistro. Said defendants, and each of them, have continued such
14 practices, in conscious disregard for the rights of plaintiffs and other persons with physical
15 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had
16 further actual knowledge of the architectural barriers referred to herein by virtue of the demand
17 letter addressed to the defendants and served concurrently with the summons and complaint. Said
18 conduct, with knowledge of the effect it was and is having on plaintiffs and other persons with
19 physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety
20 of plaintiffs and of other similarly situated persons, justifying the imposition of treble damages per
21 Civil Code §§52 and 54.3.

22 44. Plaintiff CRAIG YATES and plaintiff DREES, on behalf of its membership and
23 the disability community which it serves, consisting of persons with disabilities, would, could and
24 will return to the subject public accommodation when it is made accessible to persons with
25 disabilities.

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1 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 2 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 3 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

4 (On behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
 5 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 6 corporation and Against Defendants SUSHI BISTRO, INC., a California corporation;
 7 JEFFERY LAU; and SOPHIA LAU, inclusive)
 8 (42 U.S.C. §12101, *et seq.*)

9 45. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 10 allegations contained in paragraphs 1 through 44 of this complaint.

11 46. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 12 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 13 protect:

14 some 43 million Americans with one or more physical or mental
 15 disabilities; [that] historically society has tended to isolate and
 16 segregate individuals with disabilities; [that] such forms of
 17 discrimination against individuals with disabilities continue to be a
 18 serious and pervasive social problem; [that] the nation's proper
 19 goals regarding individuals with disabilities are to assure equality of
 20 opportunity, full participation, independent living and economic
 21 self-sufficiency for such individuals; [and that] the continuing
 22 existence of unfair and unnecessary discrimination and prejudice
 23 denies people with disabilities the opportunity to compete on an
 24 equal basis and to pursue those opportunities for which our free
 25 society is justifiably famous.

26 47. Congress stated as its purpose in passing the Americans with Disabilities Act of
 27 1990 (42 U.S.C. §12102):

28 It is the purpose of this act (1) to provide a clear and comprehensive
 national mandate for the elimination of discrimination against
 individuals with disabilities; (2) to provide clear, strong, consistent,
 enforceable standards addressing discrimination against individuals
 with disabilities; (3) to ensure that the Federal government plays a
 central role in enforcing the standards established in this act on
 behalf of individuals with disabilities; and (4) to invoke the sweep
 of Congressional authority, including the power to enforce the 14th
 Amendment and to regulate commerce, in order to address the
 major areas of discrimination faced day to day by people with
 disabilities.

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48. As part of the Americans with Disabilities Act of 1990, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

(B) a restaurant, bar or other establishment serving food or drink

42 U.S.C. §12181(7)(B)

49. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation".

50. The specific prohibitions against discrimination set forth in §302(b)(2)(a), 42 U.S.C. §12182(b)(2)(a) are:

(I) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

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(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

51. The removal of the barriers complained of by plaintiffs as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of SUSHI BISTRO pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

52. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that plaintiffs complain of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

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1 53. On information and belief, construction work on, and modifications of, the subject
2 building(s) of SUSHI BISTRO occurred after the compliance date for the Americans with
3 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
4 the ADA.

5 54. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
6 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
7 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
8 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
9 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
10 returning to or making use of the public facilities complained of herein so long as the premises
11 and defendants' policies bar full and equal use by persons with physical disabilities.

12 55. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a
13 disability to engage in a futile gesture if such person has actual notice that a person or
14 organization covered by this title does not intend to comply with its provisions". Pursuant to this
15 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about
16 May 4, 2008 , but on information and belief, alleges that defendants have continued to violate the
17 law and deny the rights of plaintiffs and of other persons with physical disabilities to access this
18 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
19 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
20 facilities readily accessible to and usable by individuals with disabilities to the extent required by
21 this title".

22 56. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
24 the Americans with Disabilities Act of 1990, including but not limited to an order granting
25 injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being
26 deemed to be the prevailing party.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

57. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 56 of this complaint.

58. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

59. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

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60. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

61. Plaintiff CRAIG YATES and the membership of plaintiff DREES are persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and continue to be denied full and equal access to defendants' SUSHI BISTRO.

62. As a legal result, plaintiffs are entitled to seek damages pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for each day on which they visited or have been deterred from visiting the bistro because of their knowledge and belief that the SUSHI BISTRO is inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

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63. On or about November 29, 2007, March 5, 2008, April 3, 2008 and May 4, 2008, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that plaintiff CRAIG YATES was denied access to entrance, path of travel, unisex restroom and other public facilities as stated herein at the SUSHI BISTRO and on the basis that plaintiff CRAIG YATES was a person with physical disabilities.

64. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3, and plaintiff CRAIG YATES suffered physical discomfort.

65. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment and worry, all of which are expectedly and naturally associated with a denial of access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole basis that plaintiffs are persons or an entity that represents persons with physical disabilities and unable, because of the architectural barriers created and maintained by the defendants in violation of the subject laws, to use the public facilities hereinabove described on a full and equal basis as other persons.

66. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or about November 29, 2007, March 5, 2008, April 3, 2008 and May 4, 2008, and on a continuing basis since then, including statutory damages, a trebling of all of actual damages, general and special damages available pursuant to §54.3 of the Civil Code according to proof.

67. As a result of defendants', and each of their, acts and omissions in this regard, plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to

the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also to compel the defendants to make their facilities accessible to all members of the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive)
 (Health & Safety Code §19955, *et seq.*)

68. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 67 of this complaint.

69. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

70. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the SUSHI BISTRO and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the bistro and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby

1 requiring said bistro and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*,
2 of the Health & Safety Code upon such alteration, structural repairs or additions per Health &
3 Safety Code §19959.

4 71. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
5 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
6 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
7 Regulations and these regulations must be complied with as to any alterations and/or
8 modifications of SUSHI BISTRO and/or the building(s) occurring after that date. Construction
9 changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant
10 to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961.
11 On information and belief, at the time of the construction and modification of said building, all
12 buildings and facilities covered were required to conform to each of the standards and
13 specifications described in the American Standards Association Specifications and/or those
14 contained in Title 24 of the California Building Standards Code.

15 72. Bistros such as the SUSHI BISTRO are "public accommodations or facilities"
16 within the meaning of Health & Safety Code §19955, *et seq.*

17 73. As a result of the actions and failure to act of defendants, and as a result of the
18 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
19 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'
20 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
21 public facilities.

22 74. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
23 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
24 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
25 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
26 and to take such action both in plaintiffs' own interests and in order to enforce an important right
27 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
28 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure

§1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

75. Plaintiffs seek injunctive relief for an order compelling defendants, and each of them, to make the subject place of public accommodation readily accessible to and usable by persons with disabilities.

Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive)
(Civil Code §51, 51.5)

76. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 75 of this complaint.

77. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any
 2 construction, alteration, repair, structural or otherwise, or
 3 modification of any sort whatsoever, beyond that construction,
 4 alteration, repair, or modification that is otherwise required by other
 5 provisions of law, to any new or existing establishment, facility,
 6 building, improvement, or any other structure . . . nor shall anything
 7 in this section be construed to augment, restrict, or alter in any way
 8 the authority of the State Architect to require construction,
 9 alteration, repair, or modifications that the State Architect otherwise
 10 possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the
 12 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
 13 also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of
 15 1990, the "intent" of the defendants in not complying with barrier removal is not an issue.

16 Hence, the failure on the parts of defendants, as reasonable and prudent public accommodations,
 17 in acting or failing to act to identify and remove barriers can be construed as a "negligent per se"
 18 act of defendants, and each of them.

19 78. The acts and omissions of defendants stated herein are discriminatory in nature and
 20 in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall
 22 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 23 or trade with any person in this state because of the race, creed,
 24 religion, color, national origin, sex, or **disability** of the person or of
 25 the person's partners, members, stockholders, directors, officers,
 26 managers, superintendents, agents, employees, business associates,
 27 suppliers, or customers.

28 As used in this section, "person" includes any person, firm
 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

Nothing in this section shall be construed to require any
 construction, alteration, repair, structural or otherwise, or
 modification of any sort whatsoever, beyond that construction,
 alteration, repair or modification that is otherwise required by other
 provisions of law, to any new or existing establishment, facility,
 building, improvement, or any other structure . . . nor shall anything
 in this section be construed to augment, restrict or alter in any way
 the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect otherwise
 possesses pursuant to other laws.

79. Defendants' acts and omissions as specified have denied to plaintiffs full and equal
 accommodations, advantages, facilities, privileges and services in a business establishment, on the

1 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.
 2 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the
 3 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
 4 shall also constitute a violation of this section". Plaintiffs accordingly incorporate the entirety of
 5 their above cause of action for violation of the Americans with Disabilities Act at 45, *et seq.*, as if
 6 replied herein.

7 80. As a legal result of the violation of plaintiff CRAIG YATES's civil rights as
 8 hereinabove described, plaintiff CRAIG YATES has suffered general and statutory damages.

9 81. Further, plaintiff CRAIG YATES suffered physical injury, emotional distress (all
 10 to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs).
 11 Plaintiffs CRAIG YATES and DREES are entitled to the rights and remedies of §52(a) of the
 12 Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean
 13 "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by
 14 statute, according to proof if deemed to be the prevailing party.

15 **PRAYER:**

16 Plaintiffs pray that this court award damages and provide relief as follows:

17 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
 18 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 19 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 20 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
 21 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
 22 corporation, and Against Defendants SUSHI BISTRO, INC., a California corporation;
 23 JEFFERY LAU; and SOPHIA LAU, inclusive)
 24 (42 U.S.C. §12101, *et seq.*)

25 1. For injunctive relief, compelling defendants SUSHI BISTRO, INC., a California
 26 corporation; JEFFERY LAU; and SOPHIA LAU, inclusive, to make the SUSHI BISTRO, located
 27 at 445 Balboa Street, San Francisco, California, readily accessible to and usable by individuals
 28 with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies,
 practice, eligibility criteria and procedures so as to afford full access to the goods, services,
 facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive, to make the SUSHI BISTRO, located at 445 Balboa Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291;

7. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiff CRAIG YATES, and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive),
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. General and compensatory damages according to proof.

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IV. **PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.**

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
corporation, and Against Defendants SUSHI BISTRO, INC., a California corporation;
JEFFERY LAU; and SOPHIA LAU, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants SUSHI BISTRO, INC., a California
corporation; JEFFERY LAU; and SOPHIA LAU, inclusive, to make the SUSHI BISTRO, located
at 445 Balboa Street, San Francisco, California, readily accessible to and usable by individuals
with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55,
and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

V. **PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
corporation and Against Defendants SUSHI BISTRO, INC., a California corporation;
JEFFERY LAU; and SOPHIA LAU, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
prevailing party;

3. Treble damages pursuant to Civil Code §52(a);

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiff CRAIG YATES, and Against Defendants SUSHI BISTRO, INC., a California corporation; JEFFERY LAU; and SOPHIA LAU, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. General and compensatory damages to plaintiff CRAIG YATES according to proof.

Dated: 5/7/08, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 5/7/08, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation

Exhibit A



Craig Yates
1004 Los Gamos Road, Unit 3
San Rafael, CA 94903

March 11, 2008

Manager
Sushi Bistro
445 Balboa St.
San Francisco, CA 94118

Dear Manager of Sushi Bistro:

I've visited Sushi Bistro on a few occasions. As I use a wheelchair, I had problems with the entry door. The door pressure is unbelievable. I needed help to open it. I saw the button for the automatic door but it never works. When it came time to use the restroom, I couldn't. It's plenty big but you've got tables stacked up and a cabinet for the sink. You can't maneuver very easily. If my recollection is right, you're also missing a grab bar. I'm left with the impression that somebody made the restroom accessible and that somebody else undid it. Am I right?

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Sushi Bistro once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you,


Craig Yates

Craig Yates
1004 Los Gamos Road, Unit 3
San Rafael, CA 94903

March 11, 2008

Owner of Building
Sushi Bistro
445 Balboa St.
San Francisco, CA 94118

Dear Owner of Building for Sushi Bistro:

I've visited Sushi Bistro on a few occasions. As I use a wheelchair, I had problems with the entry door. The door pressure is unbelievable. I needed help to open it. I saw the button for the automatic door but it never works. When it came time to use the restroom, I couldn't. It's plenty big but you've got tables stacked up and a cabinet for the sink. You can't maneuver very easily. If my recollection is right, you're also missing a grab bar. I'm left with the impression that somebody made the restroom accessible and that somebody else undid it. Am I right?

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Sushi Bistro once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you,


Craig Yates